

AMENDED IN ASSEMBLY AUGUST 7, 2000

AMENDED IN ASSEMBLY JULY 6, 2000

AMENDED IN ASSEMBLY MAY 2, 2000

AMENDED IN SENATE JANUARY 19, 2000

AMENDED IN SENATE JANUARY 11, 2000

SENATE BILL**No. 785**

Introduced by Senator Speier

February 25, 1999

An act to amend Sections 1088, 1110, 1114, 1115, 1116, 1117, 1118, and 13021 of, and to add Sections 1088.1, 1114.5, 1116.5, and 1118.5 to, the Unemployment Insurance Code, relating to withholding.

LEGISLATIVE COUNSEL'S DIGEST

SB 785, as amended, Speier. Withholding of taxes: domestic worker employers: annual reporting.

Existing law requires employers to withhold tax and contribution amounts with respect to unemployment insurance, disability insurance, employee training funding, and personal income tax from the wages paid to their employees, and to report and return those amounts to the Employment Development Department on a quarterly basis. Existing law further authorizes certain employers, as described by statute, who employ individuals to perform domestic services to elect to return unemployment and

disability insurance-related amounts on an annual basis, rather than a quarterly basis.

This bill would expand this existing election to also apply to withheld amounts of personal income taxes. This bill would, with respect to wages paid on or after January 1, 2002, prescribe certain deadlines for making the election as so modified, and would also prescribe the *conditions and procedures for—terminating the termination of the election by the employer or the Director of Employment Development.* This bill would, as provided with respect to wages paid on or after January 1, 2002, require any employer making the modified election to file with the Director of Employment Development an annual report of contributions and wages paid to the employer's workers. This bill would specify certain penalties for failure to comply with this reporting requirement, and would authorize a subject employer to report wage and tax information by telephone. This bill would, as provided, also require an employer making the modified election to provide a wages, tax, and contribution report to an employee who has separated from that employer. This bill would also require the Employment Development Department to make an annual report, as provided, to the Legislature, and would make conforming and technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1088 of the Unemployment
2 Insurance Code is amended to read:
3 1088. (a) (1) Each employer shall file with the
4 director within the time required by subdivision (a) or
5 (d) of Section 1110 for payment of employer
6 contributions, a report of contributions and a report of
7 wages paid to his or her workers in the form and
8 containing any information as the director prescribes. An
9 electronic funds transfer of contributions pursuant to
10 subdivision (f) of Section 1110 shall satisfy the
11 requirement for a report of contributions. The report of



1 wages shall include individual amounts required to be
2 withheld under Section 13020 or withheld under Section
3 13028.

4 (2) (A) In order to enhance efforts to reduce tax fraud
5 and to reduce the personal income tax reporting burden,
6 effective January 1, 1997, the report of wages shall also
7 include the full first name of the employee and total
8 wages, as defined in Section 13009, paid to each employee.
9 This paragraph shall apply to reports of wages for all
10 periods ending on or before December 31, 1999.

11 (B) For all periods beginning on or after January 1,
12 2000, the report of wages shall also include total wages
13 subject to personal income tax, as defined in Section
14 13009.5, paid to each employee.

15 (b) Each employer shall file with the director within
16 the time required by subdivision (b) or (d) of Section
17 1110 for payment of worker contributions, a report of
18 contributions containing the employer's business name,
19 address, and account number, the total amount of worker
20 contributions due, and any other information as the
21 director shall prescribe. The director shall prescribe the
22 form for the report of contributions. An electronic funds
23 transfer of contributions pursuant to subdivision (f) of
24 Section 1110 shall satisfy the requirement for a report of
25 contributions.

26 (c) In addition to the report of contributions and
27 report of wages required by employers under subdivision
28 (a), an individual who has elected coverage under
29 subdivision (a) of Section 708 is also required to file a
30 separate report of contributions, subject to Part 2
31 (commencing with Section 2601).

32 (d) Any employer making an election under
33 subdivision (d) of Section 1110 shall submit the report of
34 wages described in subdivision (a), within the time
35 required for submitting employer contributions under
36 subdivision (a) of Section 1110.

37 (e) In addition to the report of contributions and
38 report of wages described in subdivision (a), each
39 employer shall file with the director an annual
40 reconciliation return showing the total amount of wages,

1 employer contributions required under Sections 976 and
2 976.6, worker contributions required under Section 984,
3 the amounts required to be withheld under Section 13020
4 or withheld under Section 13028, and any other
5 information that the director shall prescribe. This annual
6 reconciliation return is due on the first day of January
7 following the close of the prior calendar year and is
8 delinquent if not filed on or before the last day of that
9 month. This subdivision does not apply to individuals
10 electing coverage under Section 708 or 708.5 or to
11 employers electing financing under Section 821.

12 (f) For purposes of making a report of wages under
13 subdivision (a), employers who are required under
14 Section 6011 of the Internal Revenue Code and
15 authorized regulations thereunder to file magnetic
16 media returns, shall, within 90 days of becoming subject
17 to this requirement, do one of the following:

18 (1) Submit a magnetic media format to the
19 department for approval, and upon receiving approval
20 from the department, submit any subsequent reports of
21 wages on magnetic media.

22 (2) Establish to the satisfaction of the director that
23 there is a lack of automation, a severe economic hardship,
24 a current exemption from submitting magnetic media
25 information returns for federal purposes, or other good
26 cause for not complying with the provisions of this
27 subdivision. Approved waivers shall be valid for six
28 months or longer, at the discretion of the director.

29 (g) The Franchise Tax Board shall be allowed access to
30 the information filed with the department pursuant to
31 this section.

32 (h) This section does not apply to any employer,
33 described in Section 682 or 684, who has filed an election
34 under subdivision (d) of Section 1110 for wages paid on
35 or after January 1, 2002.

36 SEC. 2. Section 1088.1 is added to the Unemployment
37 Insurance Code, to read:

38 1088.1. (a) (1) For wages paid on or after January 1,
39 2002, each employer described in Section 682 or 684, who
40 has filed an election under subdivision (d) of Section

1 1110, shall file with the director an annual report of
2 contributions and wages paid to his or her workers. This
3 report shall include the employer's name, address,
4 account number, employer contributions due under
5 Sections 976 and 976.6, worker contributions due under
6 Section 984, the quarterly and total wages paid to each
7 worker, the total wages subject to personal income tax as
8 described in Section 13009.5 paid to each worker, and any
9 personal income tax withheld under Sections 13020 and
10 13028 for each worker, during the prior calendar year.
11 The director shall prescribe the form of this report. This
12 report is due on the January 1 next following the calendar
13 year to which it applies and is delinquent if not filed on
14 or before the next following January 31.

15 (2) Any employer who fails to file the report required
16 by paragraph (1) shall, within 15 days of the mailing or
17 personal delivery of a demand from the director, report
18 to the director the information required to be reported
19 on the annual report of contributions and wages
20 described in paragraph (1). For the purpose of any
21 penalty chargeable under Section 1114 with regard to a
22 demand issued under this paragraph, a "wage item"
23 means all information required to be reported under
24 paragraph (1) for each individual for each calendar year
25 specified in the demand.

26 (b) In addition to the report required in paragraph (1)
27 of subdivision (a), if a worker is no longer performing
28 services for an employer due to disability or separation
29 from employment and has filed a claim for benefits, the
30 director may issue a written demand for a report of wages
31 paid to that individual. The director shall prescribe the
32 form of this report. This report is due within 15 days of the
33 mailing or personal delivery of the director's demand for
34 that report.

35 (c) For purposes of making a report of ~~wages and~~
36 ~~personal income tax withholdings~~ *contributions and*
37 *wages* under paragraph (1) of subdivision (a), any
38 employer who is required under Section 6011 of the
39 Internal Revenue Code and authorized regulations
40 thereunder to file magnetic media returns, shall, within

1 90 days of becoming subject to this requirement, do one
2 of the following:

3 (1) Submit a magnetic media format to the
4 department for approval. Upon receiving approval from
5 the department, the employer shall submit any
6 subsequent reports of wages on magnetic media.

7 (2) Establish to the satisfaction of the director that
8 there is a lack of automation, a severe economic hardship,
9 a current exemption from submitting magnetic media
10 information returns for federal purposes, or other good
11 cause for not complying with paragraph (1). Approved
12 waivers shall be valid for six months or longer, at the
13 discretion of the director.

14 (d) (1) The Franchise Tax Board shall be allowed
15 access to the information filed with the department
16 pursuant to this section.

17 (2) This section shall remain operative only as long as
18 Section 1137(a)(3) of the Social Security Act remains
19 operative, and, in the event that federal provision
20 becomes inoperative, shall become inoperative on the
21 same date.

22 SEC. 3. Section 1110 of the Unemployment Insurance
23 Code is amended to read:

24 1110. (a) Employer contributions required under
25 Sections 976 and 976.6, the amount of benefits received by
26 any individual pursuant to this part that is deducted from
27 an award or settlement made by the employer under the
28 provisions of Section 1382, and, except as provided by
29 subdivision (b) of this section, worker contributions
30 required under Section 984 are due and payable on the
31 first day of the calendar month following the close of each
32 calendar quarter and shall become delinquent if not paid
33 on or before the last day of that month.

34 (b) Workers' contributions required under Section
35 984 are due and payable at the same time and by the same
36 method as amounts required to be withheld under
37 Section 13020 are paid to the department pursuant to
38 Section 13021, regardless of the amount of accumulated
39 unpaid liability for workers' contributions.

1 (c) Employer contributions submitted pursuant to
2 Section 976.5 shall be paid on or before the last working
3 day of March of the calendar year to which the reduced
4 contribution rate would be applicable. Any employer
5 whose eligibility for an unemployment insurance
6 contribution rate determination is redetermined to make
7 that employer eligible to submit voluntary
8 unemployment insurance contributions in accordance
9 with Section 976.5, may submit a voluntary
10 unemployment insurance contribution within 30 days of
11 the date of notification of the redetermination.

12 (d) (1) Except as provided in subdivision (e), any
13 employer described in Section 682 or 684 may elect to
14 annually report and pay employer contributions required
15 under Sections 976 and 976.6, worker contributions
16 required under Section 984, and any amounts withheld
17 under Sections 13020 and 13028. All contributions are due
18 and payable on the first day of January following the close
19 of the prior calendar year and shall become delinquent if
20 not paid on or before the last day of that month. An
21 election under this subdivision shall be effective the first
22 day of the calendar year in which it is approved by the
23 department. An election under this subdivision shall not
24 be approved if the employer has an outstanding return or
25 report delinquency on the records of the department, or
26 an unpaid amount owed to the department, that is not the
27 subject of a timely petition for reassessment pending
28 before the appeals board at the time the election is filed.

29 (2) For wages paid on or after January 1, 2002, an
30 election under this subdivision shall be submitted to the
31 director on or before the last day of ~~April~~ January of the
32 year for which the election is being requested or the last
33 day of the month following the close of the calendar
34 quarter in which the employer becomes subject to this
35 code, whichever is later.

36 (3) An election approved by the director pursuant to
37 this subdivision may be terminated as of January 1 of any
38 calendar year only if the election has been in effect for
39 two calendar years and the employer, on or before the last
40 day of January of that year, has notified the director in

1 writing of the termination of the election. The director
2 may allow an additional 30 days to file the termination
3 notification if good cause is shown for the delay.

4 (4) An election approved by the director pursuant to
5 this subdivision for wages paid before January 1, 2002,
6 shall continue in effect for wages paid on or after January
7 1, 2002, unless the employer notifies the director of the
8 termination of the election as provided in paragraph ~~(2)~~
9 (3). An election approved by the director on or after
10 January 1, 2001, and before January 1, 2002, may be
11 terminated effective January 1, 2002, if the employer
12 notifies the director of the termination of the election on
13 or before January 31, 2002. The director may allow an
14 additional 30 days to file the termination notification if
15 good cause is shown for the delay.

16 *(5) The director may terminate an election made*
17 *under this subdivision if the electing employer fails to*
18 *make a return or report within the time required by*
19 *Section 1088.1, or to pay contributions within the time*
20 *required by paragraph (1).*

21 (e) (1) Except as otherwise provided in paragraph
22 (2), any employer described in Sections 682 and 684 who
23 pays more than twenty thousand dollars (\$20,000) in
24 wages annually, shall not be entitled to any election or
25 option allowed in subdivision (d). If at any time during
26 the year the total wages paid by an employer electing to
27 file under subdivision (d) exceeds twenty thousand
28 dollars (\$20,000), the election or option shall be
29 terminated at the close of that calendar quarter. In
30 addition to the report of wages due for that quarter, the
31 employer shall file a return and pay any contributions due
32 for that portion of the year during which the election was
33 in effect, and shall pay contributions in accordance with
34 subdivisions (a), (b), and (c) for the remainder of that
35 year.

36 (2) This subdivision does not apply to wages paid on or
37 after January 1, 2002.

38 (f) Contributions due pursuant to this section may be
39 submitted by electronic funds transfer, as defined in
40 Section 13021.5. Contributions submitted by electronic

1 funds transfer shall be deemed complete in accordance
2 with paragraph (4) of subdivision (e) of Section 13021.

3 SEC. 4. Section 1114 of the Unemployment Insurance
4 Code is amended to read:

5 1114. (a) Except as provided in subdivision (b), both
6 of the following apply:

7 (1) Any employer who, without good cause, fails to file
8 within 15 days after service by the director of notice
9 pursuant to Section 1206 of a specific written demand
10 therefor, a report of wages of each of his or her workers
11 required by this division, shall pay in addition to other
12 amounts required, for each unreported wage item a
13 penalty of ten dollars (\$10).

14 (2) Any employer required by this division to file a
15 report of wages of each of his or her workers on magnetic
16 media as prescribed by subdivision (f) of Section 1088,
17 who, without good cause, instead files a report of wages
18 on paper or in another form, shall pay in addition to other
19 amounts required, for each wage item a penalty of ten
20 dollars (\$10).

21 (b) This section does not apply to demands issued
22 under subdivision (b) of Section 1088.1.

23 SEC. 5. Section 1114.5 is added to the Unemployment
24 Insurance Code, to read:

25 1114.5. Any employer described in Section 682 or 684
26 who fails to comply with subdivision (b) of Section 1088.1
27 shall pay a penalty in the amount of fifty dollars (\$50) with
28 respect to each demand with which the employer did not
29 comply, except for those demands for which the
30 employer shows to the director's satisfaction that there
31 was good cause for the failure to comply.

32 SEC. 6. Section 1115 of the Unemployment Insurance
33 Code is amended to read:

34 1115. (a) Except as provided in subdivision (b), all of
35 the following apply:

36 (1) If the director finds that the collection of any
37 contributions will be jeopardized in any case where an
38 employing unit is insolvent, or is delinquent in a
39 substantial amount of contributions due under this
40 division, or is about to discontinue business at any of its

1 known places of business, or the business is of a temporary
2 or seasonal nature, the director may, upon giving the
3 employing unit 10 days' notice pursuant to Section 1206:

4 (A) Require payment of contributions with respect to
5 wages paid from the beginning date of the calendar
6 quarter in which notice is given to the date designated in
7 the notice.

8 (B) Require payment of contributions for reporting
9 periods less than calendar quarters.

10 (2) As used in this section "reporting period" means
11 that period less than a calendar quarter which is
12 established by the director.

13 (3) Contributions required under ~~paragraph (1) of~~
14 ~~subdivision (a)~~ *subparagraph (A) of paragraph (1)* are
15 due and payable on the date designated in the notice and
16 shall become delinquent if not paid within 10 days of the
17 due date.

18 (4) Contributions required under ~~paragraph (2) of~~
19 ~~subdivision (a)~~ *subparagraph (B) of paragraph (1)* are
20 due and payable on the first day of the reporting period
21 following the close of each reporting period and shall
22 become delinquent if not paid within 10 days of the due
23 date.

24 (5) The employing unit shall file within the time
25 required for payment of contributions under this section
26 a report or return as required by Section 1088, in the form
27 and containing the information that the director
28 prescribes.

29 (b) This section does not apply to any employer
30 described in Section 682 or 684 who has filed an election
31 under subdivision (d) of Section 1110 for wages paid on
32 or after January 1, 2002.

33 SEC. 7. Section 1116 of the Unemployment Insurance
34 Code is amended to read:

35 1116. (a) Except as otherwise provided by
36 subdivision (b), all of the following apply:

37 (1) (A) Every employing unit except a domestic or
38 foreign corporation or a domestic or foreign limited
39 liability company shall, within 10 days of quitting
40 business, file with the director a final return and report

1 of wages of its workers, in that form and containing that
2 information as the director prescribes.

3 (B) Every domestic corporation and domestic limited
4 liability company shall, within 10 days of quitting business
5 or within 10 days of the commencement of proceedings
6 to windup its affairs and voluntarily dissolve, whichever
7 expires the earlier, file with the director a return and a
8 report of wages of its workers, in that form and containing
9 that information as the director prescribes.

10 (C) Every foreign corporation and foreign limited
11 liability company shall, within 10 days of quitting business
12 or within 10 days of the surrender of its right to engage
13 in business of this state in accordance with Section 2112
14 and subdivision (d) of Section 2114 of the Corporations
15 Code for foreign corporations or Section 17455 of the
16 Corporations Code for foreign limited liability
17 companies, whichever expires the earlier, file with the
18 director a final return and report of wages of its workers,
19 in that form and containing that information as the
20 director prescribes.

21 (D) As used in this section, “quitting business” does
22 not include any change in the form or membership of an
23 employing unit if before and after that change 50 percent
24 or more of the control of management is held by the same
25 individual, or is held by an individual before death and
26 after the individual’s death by the individual’s estate or
27 heirs.

28 (2) Contributions with respect to a return required
29 under ~~subdivision (a)~~ *paragraph (1)* are due and payable
30 on the first day of the applicable 10-day period established
31 pursuant to ~~subdivision (a)~~ *paragraph (1)* and shall
32 become delinquent if not paid within 10 days of the due
33 date.

34 (3) The director for good cause may extend for not to
35 exceed 30 days the time for making a return or paying
36 without penalty or interest any amount required to be
37 paid under this section.

38 (b) This section does not apply to any employer
39 described in Section 682 or 684 who has filed an election

1 under subdivision (d) of Section 1110 for wages paid on
2 or after January 1, 2002.

3 SEC. 8. Section 1116.5 is added to the Unemployment
4 Insurance Code, to read:

5 1116.5. (a) After separation of an employee from an
6 employer, described in either Section 682 or 684, that
7 reports on an annual basis in accordance with subdivision
8 (d) of Section 1110, that employer shall provide the
9 employee with a report of all wages, withheld taxes,
10 employer contributions, and worker contributions not
11 otherwise reported in accordance with that paragraph at
12 the time that the employer is required to provide the
13 employee with the final payment of wages. Any
14 information reported in accordance with this section shall
15 be specified for each quarter and partial quarter to which
16 the report applies.

17 (b) Any employee suffering injury as a result of a
18 knowing and intentional failure by an employer to
19 comply with subdivision (a) shall be entitled to recover
20 all actual damages or one hundred dollars (\$100),
21 whichever is greater, plus costs and reasonable attorney
22 fees.

23 SEC. 9. Section 1117 of the Unemployment Insurance
24 Code is amended to read:

25 1117. (a) If any employer, other than an employer
26 described in Section 682 or 684 who has filed an election
27 under subdivision (d) of Section 1110, fails to file the
28 annual reconciliation return described in subdivision (e)
29 of Section 1088 or subdivision (j) of Section 13021 on or
30 before 30 days after notice has been given to the
31 employer of his or her failure to file, unless the failure is
32 due to good cause, the employer, in addition to any other
33 penalties imposed by this code, shall pay a penalty of one
34 thousand dollars (\$1,000), or 5 percent of the employer
35 and worker contributions required to be reconciled by
36 subdivision (e) of Section 1088, whichever is less.

37 (b) If any employer described in Section 682 or 684,
38 who has filed an election under subdivision (d) of Section
39 1110, fails to file the annual report of ~~wages and personal~~
40 ~~income tax withheld~~ *contributions and wages* described

1 in subdivision (a) of Section 1088.1 on or before 30 days
2 after notice has been given to the employer of his or her
3 failure to file, the employer, in addition to any other
4 penalties imposed by this code, shall, unless the failure is
5 due to good cause, pay a penalty of one hundred dollars
6 (\$100) or an amount equal to the total amount of
7 employer and worker contributions required to be
8 reported under subdivision (a) of Section 1088.1,
9 whichever is less.

10 SEC. 10. Section 1118 of the Unemployment
11 Insurance Code is amended to read:

12 1118. Except for any employer described in Section
13 682 or 684 who has filed an election under subdivision (d)
14 of Section 1110 for wages paid on or after January 1, 2002,
15 all of the following apply to an employer who employs
16 individuals to perform domestic service as described in
17 Sections 682 and 684:

18 (a) Effective July 1, 1997, notwithstanding Section
19 1088, a domestic service employer shall be authorized to
20 file the report of wages required by Section 1088 by
21 telephone. This does not apply to the filing of Internal
22 Revenue Service Form W-2.

23 (b) The department shall notify all domestic service
24 employers of the availability of the telephone reporting
25 system. A domestic service employer shall be required to
26 make an election to report by telephone or by mail. After
27 a domestic service employer elects to report by
28 telephone, the employer is required to report in that
29 mode for the remainder of the calendar year. If a
30 domestic service employer makes this election in the
31 second or subsequent quarter of a calendar year, the
32 employer shall be required to report by telephone for the
33 remainder of the calendar year and for all four quarters
34 of the subsequent calendar year. A domestic service
35 employer who has elected to report by telephone and
36 who is eligible under this subdivision to change the
37 reporting mode shall provide 30 days' notice to the
38 department in order to begin reporting by mail.

39 (c) A domestic service employer reporting by
40 telephone shall be required to provide the department

1 with the employer's account number, the social security
2 numbers of all employees, and the wages paid to each
3 employee for the reporting period. The department may
4 request additional information in order to determine the
5 amount of wages that are taxable.

6 (d) The department shall compute the contributions
7 owed based upon the wage information reported by the
8 domestic service employer.

9 (e) A domestic service employer reporting by
10 telephone shall be permitted to pay the contributions
11 owed by credit card or charge card. The payment shall be
12 subject to the State Payment Card Act (Chapter 2.6
13 (commencing with Section 6160) of Division 7 of Title 1
14 of the Government Code).

15 (f) If a domestic service employer reporting by
16 telephone does not pay by credit card or charge card, the
17 department shall advise the employer of the due date for
18 the payment and of any penalties and interest that will be
19 charged if a payment is late.

20 SEC. 11. Section 1118.5 is added to the
21 Unemployment Insurance Code, to read:

22 1118.5. (a) (1) Notwithstanding Sections 1088 and
23 1088.1, any employer described in Section 682 or 684 who
24 has filed an election under subdivision (d) of Section 1110
25 may file the annual report of ~~wages and personal income~~
26 ~~tax withheld~~ *contributions and wages* required by
27 subdivision (a) of Section 1088.1 by telephone.

28 (2) The department shall notify all domestic service
29 employers of the availability of the telephone reporting
30 system.

31 (3) Any domestic service employer making an
32 election under this section shall register the election in
33 the manner prescribed by the director prior to filing any
34 reports using the telephone filing system.

35 (b) After a domestic service employer registers his or
36 her election to report by telephone, the employer shall
37 report in that mode any wages paid to his or her
38 employees for that calendar year and the subsequent
39 calendar year. A domestic service employer who has
40 elected to report by telephone, and who is eligible under

1 this subdivision to change the reporting mode, shall
2 provide 30 days' notice to the department in order to
3 begin reporting by mail.

4 (c) A domestic service employer reporting by
5 telephone shall be required to provide the department
6 with the employer's account number, the name and social
7 security number of each employee, the quarterly and
8 total wages paid to each employee for the reporting
9 period, the total wages subject to personal income tax, as
10 described in Section 13009.5, paid to each employee, and
11 the total amount of any personal income tax withheld
12 under Sections 13020 and 13028 for each employee. The
13 department may request additional information in order
14 to determine the amount of wages that are taxable.

15 (d) The department shall compute the contributions
16 owed based upon the wage information reported by the
17 domestic service employer.

18 (e) A domestic service employer reporting by
19 telephone may pay the contributions owed by credit card
20 or charge card. The payment shall be subject to the State
21 Payment Card Act (Chapter 2.6 (commencing with
22 Section 6160) of Division 7 of Title 1 of the Government
23 Code).

24 (f) If a domestic service employer reporting by
25 telephone does not pay by credit card or charge card, the
26 department shall advise the employer of the due date for
27 the payment and of any penalties and interest that will be
28 charged if a payment is late.

29 SEC. 12. Section 13021 of the Unemployment
30 Insurance Code is amended to read:

31 13021. (a) Every employer required to withhold any
32 tax under Section 13020 shall for each calendar quarter,
33 whether or not wages or payments are paid in the
34 quarter, file a withholding report and a report of wages
35 in a form prescribed by the department, and pay over the
36 taxes so required to be withheld. The report of wages shall
37 include individual amounts required to be withheld
38 under Section 13020. Except as provided in subdivisions
39 (c) and (d) of this section, the employer shall file a
40 withholding report and remit the total amount of income

1 taxes withheld during the calendar quarter on or before
2 the last day of the month following the close of the
3 calendar quarter.

4 (b) (1) Effective January 1, 1995, whenever an
5 employer is required, for federal income tax purposes, to
6 remit the total amount of withheld federal income tax in
7 accordance with Section 6302 of the Internal Revenue
8 Code and regulations thereunder, and the accumulated
9 amount of state income tax withheld is more than five
10 hundred dollars (\$500), the employer shall remit the total
11 amount of income tax withheld for state income tax
12 purposes within the number of banking days as specified
13 for withheld federal income taxes by Section 6302 of the
14 Internal Revenue Code, and regulations thereunder.

15 (2) Effective January 1, 1996, the five hundred dollar
16 (\$500) amount referred to in paragraph (1) shall be
17 adjusted annually as follows, based on the annual average
18 rate of interest earned on the Pooled Money Investment
19 Fund as of June 30 in the prior fiscal year:

20

21 Average Rate of Interest

22 Greater than or equal to 9 percent: \$ 75

23 Less than 9 percent, but greater than or equal to 7 per- 250
24 cent:

25 Less than 7 percent, but greater than or equal to 4 per- 400
26 cent:

27 Less than 4 percent: 500

28

29 (c) (1) Notwithstanding subdivisions (a) and (b), for
30 calendar years beginning prior to January 1, 1995, if in the
31 12-month period ending June 30 of the prior year the
32 cumulative average payment made pursuant to this
33 division or Section 1110, for eighth-monthly periods, as
34 defined under Section 6302 of the Internal Revenue Code
35 and regulations thereunder, was fifty thousand dollars
36 (\$50,000) or more, the employer shall remit the total
37 amount of income tax withheld within three banking days
38 following the close of each eighth-monthly period, as
39 defined by Section 6302 of the Internal Revenue Code
40 and regulations thereunder. For purposes of this

1 subdivision, payment shall be made by electronic funds
2 transfer in accordance with Section 13021.5, for one
3 calendar year beginning on January 1. Payment is
4 deemed complete on the date the electronic funds
5 transfer is initiated, if settlement to the state's demand
6 account occurs on or before the banking day following the
7 date the transfer is initiated. If settlement to the state's
8 demand account does not occur on or before the banking
9 day following the date the transfer is initiated, payment
10 is deemed complete on the date settlement occurs. The
11 department shall, on or before October 31 of the prior
12 year, notify all employers required to make payment by
13 electronic funds transfer of these requirements.

14 (2) Notwithstanding subdivisions (a) and (b), for
15 calendar years beginning on or after January 1, 1995, if in
16 the 12-month period ending June 30 of the prior year, the
17 cumulative average payment made pursuant to this
18 division or Section 1110 for any deposit periods, as defined
19 under Section 6302 of the Internal Revenue Code and
20 regulations thereunder, was twenty thousand dollars
21 (\$20,000) or more, the employer shall remit the total
22 amount of income tax withheld within the number of
23 banking days as specified for federal income taxes by
24 Section 6302 of the Internal Revenue Code and
25 regulations thereunder. For purposes of this subdivision,
26 payment shall be made by electronic funds transfer in
27 accordance with Section 13021.5, for one calendar year
28 beginning on January 1. Payment is deemed complete on
29 the date the electronic funds transfer is initiated, if
30 settlement to the state's demand account occurs on or
31 before the banking day following the date the transfer is
32 initiated. If settlement to the state's demand account does
33 not occur on or before the banking day following the date
34 the transfer is initiated, payment is deemed complete on
35 the date settlement occurs. The department shall, on or
36 before October 31 of the prior year, notify all employers
37 required by this paragraph to make payments by
38 electronic funds transfer of these requirements.

39 (3) Notwithstanding paragraph (2), effective January
40 1, 1995, electronic funds transfer payments that are

1 subject to the one-day deposit rule, as defined by Section
2 6302 of the Internal Revenue Code and regulations
3 thereunder, shall be deemed timely if the payment settles
4 to the state's demand account within three banking days
5 after the date the employer meets the threshold for the
6 one-day deposit rule.

7 (4) Any taxpayer required to remit payments
8 pursuant to paragraphs (1) and (2) may request from the
9 department a waiver of those requirements. The
10 department may grant a waiver only if it determines that
11 the particular amounts paid in excess of fifty thousand
12 dollars (\$50,000) or twenty thousand dollars (\$20,000), as
13 stated in paragraphs (1) and (2), respectively, were the
14 result of an unprecedented occurrence for that
15 employer, and were not representative of the employer's
16 cumulative average payment in prior years.

17 (5) Any state agency required to remit payments
18 pursuant to paragraphs (1) and (2) may request a waiver
19 of those requirements from the department. The
20 department may grant a waiver if it determines that
21 there will not be a negative impact on the interest
22 earnings of the General Fund. If there is a negative
23 impact to the General Fund, the department may grant
24 a waiver if the requesting state agency follows procedures
25 designated by the department to mitigate the impact to
26 the General Fund.

27 (d) Any employer not required to make payment
28 pursuant to subdivision (c) of this section may elect to
29 make payment by electronic funds transfer in accordance
30 with Section 13021.5 under the following conditions:

31 (1) The election shall be made in a form, and shall
32 contain information, as prescribed by the director, and
33 shall be subject to approval by the department.

34 (2) If approved, the election shall be effective on the
35 date specified in the notification to the employer of
36 approval.

37 (3) The election shall be operative from the date
38 specified in the notification of approval, and shall
39 continue in effect until terminated by the employer or
40 the department.

(4) Funds remitted by electronic funds transfer pursuant to this subdivision shall be deemed complete in accordance with subdivision (c) or as deemed appropriate by the director to encourage use of this payment method.

(e) Notwithstanding Section 1112, no interest or penalties shall be assessed against any employer who remits at least 95 percent of the amount required by subdivision (b) or (c), provided that the failure to remit the full amount is not willful and any remaining amount due is paid with the next payment. The director may allow any employer to submit the amounts due from multiple locations upon a showing that those submissions are necessary to comply with the provisions of subdivision (b) or (c).

(f) The department may, if it believes that action is necessary, require any employer to make the report required by this section and pay to it the tax deducted and withheld at any time, or from time to time but no less frequently than provided for in subdivision (a).

(g) Any employer required to withhold any tax and who is not required to make payment under subdivision (b) shall remit the total amount of income tax withheld during each month of each calendar quarter, on or before the 15th day of the subsequent month if the income tax withheld for any of the three months or, cumulatively for two or more months, is three hundred fifty dollars (\$350) or more.

(h) For purposes of subdivisions (a), (b), and (g), payment is deemed complete when it is placed in a properly addressed envelope, bearing the correct postage, and it is deposited in the United States mail.

(i) In addition to the withholding report and report of wages described in subdivision (a), each employer shall file with the director an annual reconciliation return showing the amount required to be withheld under Section 13020, and any other information the director shall prescribe. This annual reconciliation return shall be due on the first day of January following the close of the

1 prior calendar year and shall become delinquent if not
2 filed on or before the last day of that month.

3 (j) If an employer demonstrates that an undue
4 hardship would be imposed, the director may authorize
5 an exemption from the requirement in subdivision (a) to
6 report individual amounts withheld under Section 13020
7 and the requirement in subdivision (i) to file the annual
8 reconciliation return for the 1995 calendar year only. Any
9 request for exemption must be filed on or before January
10 15, 1995. Upon approval of a request for exemption under
11 this subdivision, the employer shall file quarterly returns
12 reporting the amount withheld under Section 13020, the
13 statement required to be furnished under Section 13050,
14 and the annual return required by Section 13053, for the
15 1995 calendar year only.

16 (k) This section does not apply to any employer
17 described in Section 682 or 684 who has filed an election
18 under subdivision (d) of Section 1110 for wages paid on
19 or after January 1, 2002.

20 SEC. 13. The Employment Development
21 Department shall annually report to each house of the
22 Legislature all of the following:

23 (a) The number of employers making annual reports
24 and payments pursuant to an election made under
25 subdivision (d) of Section 1110, as amended by this act.

26 (b) The number of blocked claims of employees with
27 respect to the elections described in subdivision (a).

28 (c) Any other information necessary to evaluate the
29 effect of the election specified in subdivision (d) of
30 Section 1110, as amended by this act.

31 (d) Any statutory changes recommended by the
32 department with respect to annual reports and payments
33 by employers to the department of amounts with regard
34 to unemployment insurance, disability insurance, and
35 personal income tax.